IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

RAJENDRA SINGH. V. THE STATE OF RAJASTHAN AND OTHERS.

S.B.CIVIL WRIT PETITION nO.3732/2005, under Article 226 of the Constitution of India.

DATE OF ORDER: 20.10.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS.

Mr.Manoj Bhandari, for Petitioner.
Mr.C.P.Trivedi, for Respondent No.4
Ms.Vidyawati Bora, Assistant Government Advocate, for the Respondents – State of Rajasthan.

BY THE COURT:

REPORTABLE.

In the instant petition, it has been prayed by the petitioner that by an appropriate writ, order or direction, the impugned order dated 25.5.2005 (Annexure 5), passed by the State Government may be declared illegal and quashed and the respondents may be directed to continue the petitioner at Jodhpur Division on the post of Lower Division Clerk (LDC). It has also been prayed by the petitioner that Shri Poona Ram Vishnoi – Respondent No.4 may be restrained to take charge against the petitioner, in pursuance of the order dated 25.5.2005

(Annexure 5).

Brief fact, giving rise to the instant petition, are that vide order dated 10th July, 2004 (Annexure 1), the petitioner, while he was discharging the duties at Jodhpur Division, was transferred to Sanchore. He joined the services at Sanchore on 24th July, 2004. Thereafter, in the month of August, 2004, the petitioner made a representation (Annexure 2), for cancellation of his transfer order, citing the grounds of his ailment and for looking after his old father. Then, considering the representation of the petitioner, he was transferred back to Jodhpur Division vide order dated 30th Spetember, 2004 (Annexure 3) and the person, who was posted against the petitioner, i.e., Respondent No.4 Shri Poona Ram Vishnoi, was retransferred to Sanchore.

The petitioner joined at Jodhpur, but the Respondent No.4 preferred Appeal No.1934/2004 before the Tribunal, in which the petitioner was also impleaded as party. That appeal is pending consideration before the learned Tribunal.

An attendance certificate dated 15.6.2005 (Annexure 4) was issued to the petitioner by the Commissioner, Nagar Nigam, Jodhpur, stating therein that the petitioner has performed duty

of making survey of Ward No.56 from 29.5.2005 to 25.6.2005 and 16.6.2005 to 17.6.2005 respectively and he has deposited the requisite record in the Office, therefore, he was directed to put in appearance in the Parent Department.

The grievance of the petitioner that the matter is under consideration before the learned Tribunal below, but, in the midst of litigation, the State Government has decided not to contest Appeal No.1934/2004, before the Tribunal, whereas the order dated 30th September, 2004 still stands and only the transfer order of the petitioner has been ordered to be cancelled. Thus, according to the learned counsel for the petitioner, the order dated 25.5.2005 has been passed in arbitrary manner and in colourable exercise of power. Being aggrieved by the aforesaid order and in view of the aforesaid circumstances, the petitioner has preferred the instant petition.

On the request of the learned counsel for all the parties, the matter has been heard at the admission stage for final disposal.

Respondent No.4 – Shri Poona Ram Vishnoi, being aggrieved by the order dated 30.9.2004, preferred Appeal No.1934/2004 before the Tribunal, in which an ad-interim stay

order was granted, subject to the condition that it is the obligatory on the part Shri Poona Ram Vishnoi (appellant before the tribunal and respondent No.4 before this Court) to serve the notice on respondent No.1 within the stipulated period of three weeks, failing which the ad-interim order, so granted, will automatically come to an end and will have no effect. It appears that the petitioner was continuing on the same post at Jodhpur and was assigned the duties of survey etc. by the Commissioner, Nagar Nigam, Jodhpur, as is evident from the attendance certiifcate (Annexure 4).

Meanwhile, abruptly, the Government, in order to accommodate Shri Poona Ram Vishnoi – Respondent No.4, has issued the order dated 25.5.2005 (Annexure 5) and has taken the stand that Appeal No.1934/2004, pending before the Tribunal, should be contested and, subsequently, cancelled the order of transfer passed in favour of the petitioner dated 30.9.2004 and he was again posted in Narbada Pariyojana at Sanchore.

The petitioner was initially transferred vide Annexure 1, but, on his own request, by virtue of order dated 30.9.2004, he was again posted at Jodhpur. That order has been challenged by Respondent No.4 – private party and ad-interim order was also issued, subject to the condition, that has not been fulfilled. The

Government has abruptly passed the order dated 25.5.2005 and the impugned order dated 30.9.2004 has been cancelled, just to accommodate Shri Poona Ram Vishnoi (appellant before the Tribunal). In such circumstances, the appeal preferred by Poona Ram Vishnoi has become infructuous. It is very well revealed that instead of contesting the matter, Shri Poona Ram Vishnoi has been adjusted at the place of the petitioner. Learned counsel submits that once the transfer order, which has been carried out, cannot be cancelled by the Government. He also submits that that the order dated 25.5.2005 (Annexure 5) has been passed by the State Government, cancelling the earlier transfer order dated 30.9.2004, after its implementation. In support of this contention, the learned counsel for the petitioner has placed reliance on Narpat Singh Rajpurohit v. State of Rajasthan (WLR 1991 (S) Raj.136), in which it has been held that when a transfer order has been executed, then it cannot be cancelled.

This Court, while admitting the writ petition on 28.6.2005, has passed the order that meanwhile and until further orders, status quo as it exists today shall be maintained.

Learned counsel for the Respondent – Department submits that the petitioner has been relieved and the relieving order has been sent to him by U.P.C. However, learned counsel for the

petitioner submits that the petitioner has not ben served with the relieving order so far.

Learned counsel for Respondent No.4 submits that the second stay has been granted by the Tribunal.

Be that as it may, it is clear that both the parties are contesting the case before the Tribunal and the matter is sub-judice there. It is also clear that in order to circumvent the situation, the order dated 25.5.2005 (Annexure 5) has been passed by the State Government. It may be mentioned that instead of contesting Appeal No.1034/2004, before the Tribunal, the Government has decided not to press/contest the appeal. It may further be mentioned that by virtue of the order of this Court dated 28.6.2005, the status quo is also existing. It may also be mentioned that the petitioner has been working at Jodhpur for the last one year. Apart from that, as submitted by the learned counsel for the petitioner, the petitioner has not so far been relieved, as he has not been served with the relieving order. Though the relieving order is said to have been sent by the Respondent – Department, by U.P.C., but the same has not yet been served on the petitioner.

Looking to the aforesaid facts and circumstances of the case and taking into consideration the fact that since the matter

is sub-judice before the Tribunal, it will be appropriate to direct the Tribunal to decide the appeal and quash the order dated 25.5.2005 (Annexure 5). The order dated 25.5.2005 (Annexure 5) is, therefore, quashed and the Tribunal directed to decide Appeal No.1934/2004, within a period of one month from the date of receiving a certified copy of this order.

Till the matter is decided by the Tribunal, the position of both the parties, i.e., the petitioner as well as Respondent No.4 existing prior to issuance of the order dated 25.5.2005, shall be maintained. They shall be allowed to work at their respective places, where they were working prior to passing of the order dated 25.5.2005. They shall also be given their due salaries, if any.

However, it is made clear that the aforesaid observations will not affect the merits of the appeal pending before the Tribunal.

Both the parties are also directed not to seek un-necessary adjournments in the case before the Tribunal.

With the aforesaid observations and directions, the instant petition stands disposed of.

There will be no order as to costs.

(R.P.VYAS),J.

Scd.